1952. **File No.** Civil Cls. II

52(N)

Legal Department

B BRANCH

P.12/61

1952

**Subject:—**

Notifications under the Bombay Civil Courts Act, 1869.

**File No.** Civil Courts II/52(N)

Gen. 194 e.

28-B

I may be permitted at this stage to bring to the notice of Government certain relevant points which, I submit, deserve to be taken into consideration in this controversy.

2. Provision for two Advocates is made mainly for two reasons: (1) the complexity of the cause, which demands that more than one mind should be brought to bear upon its preparation; and (2) the convenience of the Court, which can always call upon the second advocate in case the first, namely, the senior, is otherwise engaged. As an rough and ready rule the pecuniary value of a cause was taken as an adequate index of its complexity and its capacity to bear the burden of double fees. That is why in the mofussil, suits in which an appeal lay to the District judge, namely, suits of the value upto Rs.5,000 were not regarded as complex enough for the purpose of allowing two Advocates. Recently, we have raised this Rs.5,000 limit to Rs.10,000, mainly in view of the change in the value of money. Therefore, the proper course would have been to amend the mofussil rule itself disallowing two advocates in suits upto the value of Rs.10,000 and allowing them only in suits above that value where the appeal lies directly to the High Court. The High Court has amendyd the Appellate Side Rule by scaling up the valuation upto Rs.5,000. It should be suggested to the High Court that in view of the change made in the mofussil practice, Rs.10,000 is the correct index at present of the complexity of a cause and should take the place of the original Rs.5,000 all over the State.

3. Secondly, it is apparent that City Civil Court procedure is still modelled on the lines of the High Court procedure on the Original Side. Rule 565(h) of the Original Side Rules lays down that the costs of one counsel only shall be allowed on taxation between party

ed party in any long cause where the sum claimed is below Rs.10,001 or where the claim in dispute is in respect of or relates to immoveable or moveable property of a lower value than Rs.10,001, unless the Judge at the trial or the Sitting Judge in Chambers before the trial sanctions on special grounds the employment of more than one counsel by the party whose costs are under taxation as aforesaid. The rule, therefore, contemplates the normal procedure of one counsel for suits upto Rs.10,000. It should be pointed out to the High Court that the complexity of an cause does not change merely because the Tribunal changes. It may be that a Solicitor was available on the Original Side to help counsel and could at the last minute engage another counsel since the brief was kept ready. But that is no reason for making a change in the City Civil Court procedure, the very justification of which Court was to dispense with the duel system. No representation seems to have been made by the City Civil Court so far that their work is inconvenienced or they are embarrassed in any way because two counsel are not allowed in suits upto Rs.10,000, and that as a consequence adjournments have to be freely granted and the hearing of suits thus get unduly prolonged. On the other hand, the last letter of the High Court which couples the raising of the fees with the question of two counsel clearly suggests that the only underlying idea is to enhance the remuneration to the lawyers. That, in my opinion, is not a relevant consideration at all for changing the practice in the City Civil Court which has been accepted at least for the last three years without any complaint; for, there is no reference to any complaints either by the Bar or by the Court in the letters written by the High Court. It is interesting to find that in the beginning the High Court had as a matter of fact suggested that the two-counsel rule should be made applicable to all kinds of cases below Rs.10,000. It is only at a very late stage that reference seems to have been made to the other clauses

of cases mentioned in rule 565(ii), such as, short x causes, undefended long causes, summary suits etc.

4. I would, therefore, suggest that (a) the justification of the two-counsel rule should be emphasised in our letter, (b) it should be pointed out that owing to the recent change in the mofussil practice, Rs.10,000 should be adopted as the criterion throughout the State, and (c) there is no reason to make a departure in the City Civil Court from the practice which prevailed on the Original Side for cases below Rs.10,000.

5. I am conscious that in respect of the City Civil Court we had accepted the proposal for cases between Rs. 5,000 and Rs. 10,000; but since the general issue is now raised and the question of consolidating the Rules has also arisen, we may bring the above arguments to the notice of the High Court and invite reconsideration of the whole question.

Id/- ( P.M.L.) 14/2.

Remembrancer of Legal Affairs.

K.D.P.
20/7/56.

S.C.

L. DX. R. I. 1766/25-1-52.

Legal Department.

It is presumed that the Civil Judge (senior Division), Dhulia, had already exercised jurisdiction over the four villages of Shewali, Kakani, Bhadgaon and Pimperkhed with effect from 11th June 1951 on which date the notification was issued. If so, the proper method would be to issue a corrigendum to the said notification so as to avoid giving retrospective effect to the jurisdiction which has already been exercised. The necessary corrigendum is sent herewith.

2. There is no objection to issuing the two notification forwarded by the High Court at pages 31 and 33 ante. The notification at page 31 ante is being issued in modification of the previous notification issued in that behalf. That notification would therefore in effect supersede the Government notification No.7169/6, dated the 11th June 1951, in so far as it alters the limits of the judicial districts of Nasik and West Khandesh. Under the above proposals the question of giving retrospective effect to the notifications at pages 31 and 33 ante does not arise.

Id/- ( J.R.D.) 20/2

Additional Secretary to Government.

U.R? to H.D.,No.2772,dated the 20th February 1952.

R.J.P.
20/7/56

S.C.

R.I. 5781/22-3-52.

LEGAL DEPARTMENT.

Attention is invited to Additional Secretary opinion No.6377,dated 10th May 1950. Unless the Bombay Civil Courts Act,1869 is applied to the Akrani Mahal it would not be legally feasible to include the same within the local limits if the Court of the Civil Judge at Taloda and so long as Akrani Mahal is not included within the local limits of the said Court no notification as proposed in the H.D. note at pages 5-6 ante can issue.

Id/- ( J.R.D.) 25/3

Additional Secretary to Government.

U.R. to H.D.No.4598,dated the 26th March 1952.

R.D.R.
20/7/56

S.C.

Legal Department.

A revised draft notification is sent herewith

The draft notification at page 7 ante as framed by the Home Department is not in order as it seeks to modify notification No.373/6,dated the 4th January 1950 which has been already cancelled by Government Notification, Home Department No. 373/6 dated the 29th February 1952. The proper course now is to issue a fresh notification under section 23 of the Bombay Civil Courts Act, 1869 appointing Sawantwadi as the place for holding the Court of Civil Judge (Junior Division), Sawantwadi

Id/- ( J.R.D.) 10/4

Additional Secretary to Government.

U.R. to H.D.No.5486,dated the 12th ~~Mark~~ April 1952

A.D.P.
20/7/56

S.C.

NOTIFICATION.

Home Department,

Bombay Castle, 1952.

Bombay Civil Courts Act, 1869. No. .- In exercise of the powers conferred by section 23 of the Bombay Civil Courts Act, 1869 (XIV of 1869) the Government of Bombay is pleased to appoint Sawantwadi as the place at which the Civil Judge (Junior Division) Sawantwadi, shall hold his court.

By order of the Governor of Bombay,

Secretary to Government.

R.D.P.
20/7/56

S.C.

R.I.9241/8-5-52

Legal Department.

On the day on which the Bombay Agricultural Debtors Relief Act,1947 came into force, the Revenue Department issued a notification under section 92 of the Government of India Act,1935, directing that the Bombay Agricultural Debtors Relief Act shall apply to the partially excluded areas in the Province of Bombay, namely Mehwassi area, Akrani Mahal and Shahada, Nandurbar and Taloda talukas. In the Bombay Agricultural Debtors Relief Act, however "court" is defined to mean "the court of the Civil Judge (Senior Division), having ordinary jurisdiction in the area where the debtor ordinarily resides and if there is no such Civil Judge, the Court of the Civil Judge (Junior Division) having such jurisdiction." On examination, it was found that no Civil Court under the Bombay Civil Courts Act could be established for the Akrani Mahal and the Mehwassi areas, as the said act did not extend to these two areas. The Civil Judge, Nandurbar, at the time had jurisdiction over the talukas of Nandurbar, Shahada and Taloda. It was apparent therefore that under the Bombay Agricultural Debtors Relief Act, read with the definition of the word "court", the Civil Judge (Junior Division), Nandurbar, had jurisdiction to try Bombay Agriculbural Debtors Relief applications from Nandurbar, Shahada and Taluda Talukas. He had no jurisdiction to try the Bombay Agricultural Debtors Relief applications from Mehwassi areas and Akrani Mahal. The R.L.A. therefore advised the Revenue Department, in his opinion No.2040 dated the 14th March 1949 to apply the B.A.D.R.Act to the said two areas under section 92 of the Government of India Act, 1935 with the modification that the definition of the word "court" should be as follows:-

"The Court of the Civil Judge (Junior Division), Nandurbar sitting at Shahada". The R.D.Notfn. under sec. 92 was,issued on the 21st April 1949 under R.D.No.LA 140/46. It, therefore, appears that

Nandurbar, was competent to hear B.A.D.R. Applications from the following areas:

Nandurbar Taluka,
Shahada Taluka,
Taluda Taluka,
Mehwassi area, and
Akrani Mahal.

After the coming into force of the Constitution the power to issue notifications under section 92 of the Government of India Act came to an end, and ~~the~~ power was given to the Governor under paragraph 5 of the fifth Schedule to the Constitution to issue a notification only if he thought fit that any particular Act of Parliament or of the Legislature of the State shall not apply to a scheduled area or shall apply to a scheduled area subject to such exceptions and modifications as he may specify in the notification. Under the order issued by the President in virtue of para.6 of the 5th Schedule the following areas in the West Khandesh District are now the scheduled area:-

Mehwassi Area,
Nawapur Petha,
Akrani Mahal.

2. The Home Department by its notification No.9163/5, dated the 4th November 1950, issued under sections 21, 22A and 23 of the Bombay Civil Courts Act, 1869 established the court of Civil Judge (Junior Division) at Taloda. The local limits of the ordinary jurisdiction of the said Civil Judge were the villages in the Mehwassi area and villages in the Taloda taluka.

3. The Home Department by its notification No.2031/5-II dated the 21st April 1952, issued under sections 21, 22A and 23 of the Bombay Civil Courts Act established a court of a Civil Judge (Junior Division) at Shahada. The local limits of the ordinary jurisdiction of the said Judge were comprised of the villages in the Shahada Taluka.

4. Section 46 of the Bombay Agricultural Debtors Relief Act, 1947 provides that save as otherwise expressly provided in this Act, the provisions of the Code

shall apply to all proceedings under this Chapter. Under section 24 of the Civil Procedure Code, the High Court or the District Court of its own motion may at any stage transfer any suit, appeal or other proceeding pending before it for trial or disposal to any court subordinate to it and competent to try and dispose of the same. It, therefore, appears that as soon as the Court of Civil Judge (Junior Division) at Taloda was established under the Home Department Notification No.9163/5 dated the 4th November 1950, it was competent for the High Court or the District Judge to transfer B.A.D.R. applications pending with the Civil Judge, Nandurbar, to the Civil Judge at Taloda. Similarly, as soon as a court of the Civil Judge (Junior Division) at Shahada was established under Home Department Notification No.2031/b-II dated the 24th April 1952, it was competent for the High Court or the District Judge to transfer the B.A.D.R. applications pending with the Civil Judge, Nandurbar, to the Civil Judge (Junior Division) at Shahada. No notification by Government for transferring such applications is necessary, as assumed by the District Judge, West Khandesh. The statement made by the Registrar in his D.O.letter dated the 14th March 1952 that the Civil Judge either at Taloda or Shahada got only the power to hear regular civil suits and not the power to do B.A.D.R. Act work does not appear to be correct. The notifications in question are general in terms and do not refer to any regular suits.

5. The difficulty would arise only in the case of the B.A.D.R. work pending with Civil Judge,(Junior Division), Nandurbar, from the Akrani Mahal and Mehwassi area. The jurisdiction to try B.A.D.R. applications was given to the Civil Judge, Nandurbar by virtue of the Revenue Department Notification No.L.A 140/46 dated the 21st April 1949 issued under section 92 of the Government of India Act, 1935 under which the definition of the word "court" as given in the B.A.D.R. Act was modified so as to suit the circumstances of the aforesaid two areas wherein it was not [illegible]

sh a civil court a

apply to the said two areas. The Civil Judge, Nandurbar, was given this power on the 21st April 1949. If at all any B.A.D.R. applications are pending from the Akrani Mahal or Mehwassi Areas, the Civil Judge, Nandurbar, will have to dispose of them himself.

6. It is clear from what is stated above, that it is not for Government to issue a notification transferring the B.A.D.R. applications pending with the Civil Judge (Junior Division), Nandurbar, from the Shahada and Taloda Talukas.

7. If, however, Government wants to issue a notification as proposed at page 36, it may be issued as amended. The reference to the Mehwassi Areas has been omitted for the reason stated in paragraph 5 above. If it is intended that B.A.D.R. applications pending from Mehwassi Areas should be disposed by the Civil Judge (Junior Division), Taloda, the definition of the word "court" in its application to the Mehwassi Areas will have to be amended by a regulation under para.5(2) of the Fifth Schedule to the Constitution of India in view of the provisions of clause (E) of the section 2 of the West Khandesh Mehwassi Regulation 1949 under which the Bombay Agricultural Debtors Relief Act,1947 extended by the Governor under section 92 of the Government of India Act, 1935 along with the definition of "court" as modified and specified in the order, shall be deemed to be in force in the Mehwassi Estates.

Id/- (S.R.B.) 21/5.

Additional Secretary to Government.

U.R. to R.D.No. 8593, dated the 22nd May 1952.

R.D.P.
20/7/56.
S.C.

R.I.19478/16-8-52.

Legal Department.

The proposal of the Home Department to delete words "with effect on and from the ...." from the notification of the nature at page 25 of file 29/6 and to insert the clause (4) shown in the Home Department note at page 10 ante is not in order for the following reasons:

The words "with effect on and from the ...." are applicable to all the three clauses mentioned in the said notification. The effect of the insertion of clause(4) in the manner shown in the Home Department's note at page 10 will be that only a court which has been constituted shall come into being on the date on which the Civil Judge assumes charge of his appointment. The object of the notification is that all the clauses of the notification are to come into force on the date specified in the notification simultaneously. To achieve this object and to provide for the difficulties now pointed out by the Home Department, the proper course would be to bring the notification into force after the expiration of a certain period, say four months or six months from the date of the notification. Within the period of these four months or six months preliminaries required for the constitution of the court or the appointment of the Civil Judge may be completed. If it is found that such preliminaries are not likely to be completed before the expiry of the period of four months or six months, as the case may be, that period may can further be extended by an amendment to the original notification by such further period as may be found necessary. Home Department should consider whether this will not solve the practical difficulties involved in such cases.

R.D.P.
20/8
S.C.

Id/- 8/10
Additional Secretary to Government.

U.R. to H.D.No.16651/B, dated